



**NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 562**

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S562-ATT-16 [v.4]

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Amends Title [NO]
First Edition

Date _____, 2019

Senator Daniel

moves to amend the bill on page 1, line 6, through page 7, line 24, by rewriting the lines to read:

**"PART I. EXPUNCTIONS FOR OFFENSES COMMITTED PRIOR TO THE
EFFECTIVE DATE OF THE LEGISLATION KNOWN AS RAISE THE AGE.**

SECTION 1.(a) Article 5 of Chapter 15A of the General Statutes is amended by
adding a new section to read:

**"§ 15A-145.8 Expunction of records for offenders under the age of 18 at the time of
conviction of certain misdemeanors and felonies upon completion of the
sentence.**

(a) A person or the district attorney may file a petition, in the court of the county where
the person was convicted for expunction of any misdemeanor or Class H or I felony except as
provided in subsection (b) of this section, from the person's criminal record if the offense was
committed while the person was less than 18 years of age but at least 16 years of age. The petition
shall not be filed until (i) any active sentence, period of probation, and post-release supervision
has been served, and (ii) the person has no restitution orders or civil judgments representing
amounts ordered for restitution outstanding.

(b) Any violation of the motor vehicle laws under Chapter 20 of the General Statutes
including any offense involving impaired driving as defined in G.S. 20-4.01(24a), or any offense
requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or
not the person is currently required to register, is not eligible for expunction under this section.

(c) If the petition was not filed by the district attorney, the petition shall be served upon
the district attorney of the court wherein the case was tried resulting in conviction. The district
attorney shall have 30 days thereafter in which to file any objection thereto and shall be duly
notified as to the date of the hearing of the petition. The district attorney shall make his or her
best efforts to contact the victim, if any, to notify the victim of the request for expunction prior
to the date of the hearing.

(d) If the court, after hearing, finds that (i) the offense was committed while the person
was less than 18 years of age but at least 16 years of age, (ii) any active sentence, period of
probation, and post-release supervision was completed, and (iii) the person has no restitution
orders or civil judgments representing amounts ordered for restitution outstanding, the court shall
order that the person be restored, in the contemplation of the law, to the status the person occupied
before such arrest or indictment or information, and that the record be expunged from the records



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1 of the court. A person convicted of multiple offenses shall be eligible to have those convictions
2 expunged pursuant to this section.

3 (e) Any petition for expunction under this section shall be on a form approved by the
4 Administrative Office of the Courts and shall be filed with the clerk of superior court in the
5 county where the person was convicted. Upon order of expunction, the clerk shall forward the
6 petition to the Administrative Office of the Courts.

7 (f) No person as to whom such order has been entered shall be held thereafter under any
8 provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of
9 that person's failure to recite or acknowledge such arrest, or indictment, information, or trial, or
10 response to any inquiry made of the person for any purpose.

11 (g) The court shall also order that the conviction be expunged from the records of the
12 court. The court shall direct all law enforcement agencies, the Division of Adult Correction and
13 Juvenile Justice of the Department of Public Safety, the Division of Motor Vehicles, and any
14 other State or local government agencies identified by the petitioner as bearing record of the same
15 to expunge their records of the petitioner's conviction. The clerk shall notify State and local
16 agencies of the court's order as provided in G.S. 15A-150.

17 (h) A person who files a petition for expunction of a criminal record under this section
18 must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the
19 time the petition is filed. Fees collected under this subsection are payable to the Administrative
20 Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and
21 fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs
22 of criminal record checks performed in connection with processing petitions for expunctions
23 under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be
24 retained by the Administrative Office of the Courts and used to pay the costs of processing
25 petitions for expunctions under this section. This subsection does not apply to petitions filed by
26 an indigent."

27 **SECTION 1.(b)** This section is effective December 1, 2019, and applies to offenses
28 committed before that date.
29

30 **PART II. PROSECUTOR ACCESS TO EXPUNGED FILES**

31 **SECTION 2.(a)** G.S. 15A-151.5(a) reads as rewritten:

32 "(a) Notwithstanding any other provision of this Article, the Administrative Office of the
33 Courts shall make all confidential files maintained under G.S. 15A-151 electronically available
34 to all prosecutors of this State if the criminal record was expunged on or after July 1, 2018, under
35 any of the following:

- 36 (1) G.S. 15A-145. Expunction of records for first offenders under the age of 18 at
37 the time of conviction of misdemeanor; expunction of certain other
38 misdemeanors.
39 (2) G.S. 15A-145.1. Expunction of records for first offenders under the age of 18
40 at the time of conviction of certain gang offenses.
41 (3) G.S. 15A-145.2. Expunction of records for first offenders not over 21 years of
42 age at the time of the offense of certain drug offenses.

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- (4) G.S. 15A-145.3. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses.
- (5) G.S. 15A-145.4. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.
- (6) G.S. 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.
- (7) G.S. 15A-145.6. Expunctions for certain defendants convicted of prostitution.
- (7a) G.S. 15A-145.7. Expunction of records for first offenders under 20 years of age at the time of the offense of certain offenses.
- (7b) G.S. 15A-145.8. Expunction of records for offenders under the age of 18 at the time of conviction of certain misdemeanors and felonies upon completion of the sentence.
- (8) G.S. 15A-146(a). Expunction of records when charges are dismissed.
- (9) G.S. 15A-146(a1). Expunction of records when charges are dismissed."
- SECTION 2.(b)** This section is effective December 1, 2019.

PART III. STREAMLINE EXPUNCTIONS FOR CHARGES NOT RESULTING IN CONVICTION

SECTION 3.(a) G.S. 15A-146 reads as rewritten:

"§ 15A-146. Expunction of records when charges are dismissed or there are findings of not guilty.

(a) Dismissal. — If any person is charged with a crime, either a misdemeanor or a felony, or was charged with an ~~infraction under G.S. 18B-302(i) prior to December 1, 1999, infraction,~~ and the charge is dismissed, that person or the district attorney, may petition the court of the county where the charge was brought for an order to expunge from all official records any entries relating to ~~his~~ that person's apprehension or trial. ~~The court shall hold a hearing on the petition and, upon finding that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, Upon a finding that the sole charge was dismissed, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial.~~

(a1) Multiple Dismissals. — ~~Notwithstanding subsection (a) of this section, if~~ If a person is charged with multiple offenses and ~~the any~~ charges are dismissed, then a person may petition to have each of the dismissed charges expunged. ~~The court shall hold a hearing on the petition. If the court finds that all of the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, charges were dismissed, the court shall order the expunction. If the court finds that any charge resulted in a conviction on the day of the dismissal or had not yet reached final disposition, the court shall hold a hearing to determine if the records of any charges dismissed retain evidentiary value. If the court, after hearing, finds that all related criminal charges have reached final disposition, the court may order the expunction of any charge that was dismissed.~~

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1 (a2) Finding of Not Guilty. – If any person is charged with a crime, either a misdemeanor
2 or a felony, or an ~~infraction under G.S. 18B-302(i) prior to December 1, 1999, infraction,~~ and a
3 finding of not guilty or not responsible is entered, that person or the district attorney may petition
4 the court of the county where the charge was brought for an order to expunge from all official
5 records any entries relating to apprehension or trial of that crime. ~~The court shall hold a hearing~~
6 ~~on the petition and upon finding that the person had not previously been convicted of any felony~~
7 ~~under the laws of the United States, this State, or any other state, Upon determining that a finding~~
8 ~~of not guilty or not responsible was entered and all related criminal charges have reached final~~
9 ~~disposition, the court shall order the expunction. No person as to whom such an order has been~~
10 ~~entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be~~
11 ~~guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by~~
12 ~~reason of failure to recite or acknowledge any expunged entries concerning that crime. If a person~~
13 ~~is charged with multiple offenses and findings of not guilty or not responsible are made on~~
14 ~~charges, then a person or the district attorney may petition to have each of the charges disposed~~
15 ~~by a finding of not guilty or not responsible expunged. The court shall hold a hearing on the~~
16 ~~petition. If the court finds that the person had not previously been convicted of any felony under~~
17 ~~the laws of the United States, this State, or any other state, Upon determining that findings of not~~
18 ~~guilty or not responsible were entered, the court shall order the expunction.~~

19 (a3) Effect of Expunction. – No person as to whom ~~such an order has been entered by a~~
20 ~~court or by operation of law~~ under this section shall be held thereafter under any provision of any
21 law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to
22 any inquiry made for any purpose, by reason of ~~his the person's~~ failure to recite or acknowledge
23 any expunged entries concerning apprehension or trial.

24 (a4) Dismissal on or After July 1, 2020. – If any person is charged with a crime, either a
25 misdemeanor or felony, or an infraction, and the charge is dismissed on or after July 1, 2020, the
26 dismissed charge is expunged by operation of law. The district attorney who filed the dismissal
27 or judicial officer who ordered the dismissal, shall provide notice of the dismissal to the clerk.

28 (a5) Finding of Not Guilty on or After July 1, 2020. – If any person is charged with a
29 crime, either a misdemeanor or felony, or an infraction, and a finding of not guilty or not
30 responsible is entered on or after July 1, 2020, the court that entered the finding shall order the
31 expunction from all official records any entries relating to apprehension or trial of that crime. If
32 a person is charged with multiple offenses and any charge was not dismissed, the court shall hold
33 a hearing to determine if the records of any charges dismissed retain evidentiary value. If the
34 court, after hearing, finds that all related criminal charges have reached final disposition, the
35 court may order the expunction of any charge that was dismissed.

36 (a6) Hearing. – Except as otherwise specifically provided in this section, a court may grant
37 a petition for expunction under this section without a hearing.

38 ...

39 (c) Any petition for expungement under this section shall be on a form approved by the
40 Administrative Office of the Courts and be filed with the clerk of superior court. Upon order of
41 ~~expungement, expungement by a court or by operation of law,~~ the clerk shall notify State and
42 local agencies of the court's order as provided in G.S. 15A-150 and forward the petition to the
43 Administrative Office of the Courts.

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...."

SECTION 3.(b) G.S. 15A-150(b) reads as rewritten:

"(b) Notification to Other State and Local Agencies. – Unless otherwise instructed by the Administrative Office of the Courts pursuant to an agreement entered into under subsection (e) of this section for the electronic or facsimile transmission of information, the clerk of superior court in each county in North Carolina shall send a certified copy of an order granting an expunction to a person named in subsection (a) of this section to (i) all of the agencies listed in this subsection and (ii) the person granted the expunction, unless the expunction was granted pursuant to subsections (a4) and (a5) of G.S. 15A-146. An agency receiving an order under this subsection shall purge from its records all entries made as a result of the charge or conviction ordered expunged, except as provided in G.S. 15A-151. The list of agencies is as follows:

- (1) The sheriff, chief of police, or other arresting agency.
- (2) When applicable, the Division of Motor Vehicles.
- (3) Any State or local agency identified by the petition as bearing record of the offense that has been expunged.
- (4) The Department of Public Safety, Combined Records Section.
- (5) The State Bureau of Investigation."

SECTION 3.(c) By February 1, 2020, the Department of Public Safety, in conjunction with the Department of Justice and the Administrative Office of the Courts, shall jointly develop and submit a report to the Joint Legislative Oversight Committee on Justice and Public Safety on recommendations and the costs involved to automate the expunction process for all State agencies with records subject to expunction orders and ensure the efficacy of the record expunction.

SECTION 3.(d) Subsections (a) through (a3), and (a6) of G.S. 15A-146 as amended by subsection (a) of this section, become effective December 1, 2019, and apply to petitions filed on or after that date. Subsections (a4) and (a5) become effective July 1, 2020, and apply to charges disposed of on or after that date. The remainder of this section is effective when it becomes law.

PART IV. ALLOW EXPUNCTION OF MULTIPLE NONVIOLENT MISDEMEANOR OR FELONY CONVICTIONS

SECTION 4.(a) G.S. 15A-145.5 reads as rewritten:

"§ 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.

(a) For purposes of this section, the term "nonviolent misdemeanor" or "nonviolent felony" means any misdemeanor or felony except the following:

- (1) A Class A through G felony or a Class A1 misdemeanor.
- (2) An offense that includes assault as an essential element of the offense.
- (3) An offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.
- (4) Any of the following sex-related or stalking offenses: G.S. 14-27.25(b), 14-27.30(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1.

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- 1 (5) Any felony offense in Chapter 90 of the General Statutes where the offense
2 involves methamphetamines, heroin, or possession with intent to sell or
3 deliver or sell and deliver cocaine.
4 (6) An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for
5 which punishment was determined pursuant to G.S. 14-3(c).
6 (7) An offense under G.S. 14-401.16.
7 (7a) An offense under G.S. 14-54(a), 14-54(a1), or 14-56.
8 (8) Any felony offense in which a commercial motor vehicle was used in the
9 commission of the offense.
10 (8a) An offense involving impaired driving as defined in G.S. 20-4.01(24a).
11 (9) Any offense that is an attempt to commit an offense described in subdivisions
12 (1) through (8a) of this subsection.

13 (b) Notwithstanding any other provision of law, if the person is convicted of more than
14 one nonviolent felony or nonviolent misdemeanor in the same session of court and none of the
15 nonviolent felonies or nonviolent misdemeanors are alleged to have occurred after the person
16 had already been served with criminal process for the commission of a nonviolent felony or
17 nonviolent misdemeanor, then the multiple nonviolent felony or nonviolent misdemeanor
18 convictions shall be treated as one nonviolent felony or nonviolent misdemeanor conviction
19 under this section, and the expunction order issued under this section shall provide that the
20 multiple nonviolent felony convictions or nonviolent misdemeanor convictions shall be
21 expunged from the person's record in accordance with this section.

22 (c) A person may file a petition, in the court of the county where the person was
23 convicted, for expunction of ~~a one or more~~ nonviolent misdemeanor or nonviolent felony
24 ~~conviction-convictions~~ from the person's criminal record if the person has ~~no other misdemeanor~~
25 ~~or felony convictions, other than a traffic violation.~~ not previously been convicted of an A1
26 misdemeanor or a felony that is listed as an exception to the term "nonviolent felony" as provided
27 in G.S. 15A-145.5(a). ~~The A~~ petition for expunction of one or more nonviolent felony convictions
28 shall not be filed earlier than 10 years after the date of the person's last conviction for a nonviolent
29 felony or nonviolent misdemeanor, other than a traffic offense, or when any active sentence,
30 period of probation, and post-release supervision has been served, whichever occurs later. A
31 petition for expunction of one or more nonviolent misdemeanor convictions shall not be filed
32 earlier than five years for a ~~after the date of the person's last conviction for a nonviolent felony~~
33 ~~or nonviolent misdemeanor-misdemeanor, other than a traffic offense,~~ or when any active
34 sentence, period of probation, and post-release supervision has been served, whichever occurs
35 later. The petition shall contain, but not be limited to, the following:

- 36 (1) An affidavit by the petitioner that the petitioner ~~has been~~ is of good moral
37 character ~~since the date of conviction for the nonviolent misdemeanor or~~
38 ~~nonviolent felony~~ and has not been convicted of any other felony or
39 misdemeanor, other than a traffic violation, under the laws of the United States
40 or the laws of this State or any other ~~state-state~~ during the applicable five-year
41 or 10-year waiting period set forth in this subsection.
42 (2) Verified affidavits of two persons who are not related to the petitioner or to
43 each other by blood or marriage, that they know the character and reputation

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- 1 of the petitioner in the community in which the petitioner lives and that the
2 petitioner's character and reputation are good.
- 3 (3) A statement that the petition is a motion in the cause in the case wherein the
4 petitioner was convicted.
- 5 (4) An application on a form approved by the Administrative Office of the Courts
6 requesting and authorizing a name-based State and national criminal history
7 record check by the Department of Public Safety using any information
8 required by the Administrative Office of the Courts to identify the individual,
9 a search by the Department of Public Safety for any outstanding warrants on
10 pending criminal cases, and a search of the confidential record of expunctions
11 maintained by the Administrative Office of the Courts. The application shall
12 be filed with the clerk of superior court. The clerk of superior court shall
13 forward the application to the Department of Public Safety and to the
14 Administrative Office of the Courts, which shall conduct the searches and
15 report their findings to the court.
- 16 (5) An affidavit by the petitioner that no restitution orders or civil judgments
17 representing amounts ordered for restitution entered against the petitioner are
18 outstanding.

19 Upon filing of the petition, the petition shall be served upon the district attorney of the court
20 wherein the case was tried resulting in conviction. The district attorney shall have 30 days
21 thereafter in which to file any objection thereto and shall be duly notified as to the date of the
22 hearing of the petition. Upon good cause shown, the court may grant the district attorney an
23 additional 30 days to file objection to the petition. The district attorney shall make his or her best
24 efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the
25 date of the hearing.

26 The presiding judge is authorized to call upon a probation officer for any additional
27 investigation or verification of the petitioner's conduct since the conviction. The court shall
28 review any other information the court deems relevant, including, but not limited to, affidavits
29 or other testimony provided by law enforcement officers, district attorneys, and victims of crimes
30 committed by the petitioner.

31 If the court, after hearing, finds that the petitioner has not previously been granted an
32 expunction of a nonviolent felony under this section, G.S. 15A-145, 15A-145.1, 15A-145.2,
33 15A-145.3, or 15A-145.4;section; the petitioner ~~has remained~~ is of good moral character; the
34 petitioner has no outstanding warrants or pending criminal cases; the petitioner has no other
35 felony or misdemeanor convictions other than a traffic ~~violation;~~ violation during the applicable
36 five-year or 10-year waiting period set forth in this subsection; the petitioner has no outstanding
37 restitution orders or civil judgments representing amounts ordered for restitution entered against
38 the petitioner; ~~and the petitioner was convicted of an offense or offenses eligible for expunction~~
39 ~~under this section and was convicted of, and completed any sentence received for, a nonviolent~~
40 ~~felony at least 10 years prior to the filing of the petition or a nonviolent misdemeanor at least five~~
41 ~~years prior to the filing of the petition, it~~ section; and the petitioner has completed the five-year
42 waiting period set forth in this subsection for expunction of one or more nonviolent misdemeanor
43 convictions, or the 10-year waiting period set forth in this subsection for expunction of one or

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1 more nonviolent felony convictions, the court may order that ~~such the~~ person be restored, in the
2 contemplation of the law, to the status the person occupied before ~~such the~~ arrest or indictment
3 or information, except as provided in G.S. 15A-151.5. If the court denies the petition, the order
4 shall include a finding as to the reason for the denial.

5 ...

6 (e) The court shall also order that the conviction or convictions be expunged from the
7 records of the court and direct all law enforcement agencies bearing record of the same to
8 expunge their records of the conviction. The clerk shall notify State and local agencies of the
9 court's order, as provided in G.S. 15A-150.

10 (f) Any other applicable State or local government agency shall expunge from its records
11 entries made as a result of the conviction or convictions ordered expunged under this section
12 upon receipt from the petitioner of an order entered pursuant to this section. The agency shall
13 also vacate any administrative actions taken against a person whose record is expunged under
14 this section as a result of the charges or convictions expunged. A person whose administrative
15 action has been vacated by an occupational licensing board pursuant to an expunction under this
16 section may then reapply for licensure and must satisfy the board's then current education and
17 preliminary licensing requirements in order to obtain licensure. This subsection shall not apply
18 to the Department of Justice for DNA records and samples stored in the State DNA Database and
19 the State DNA Databank.

20"

21 **SECTION 4.(b)** This section becomes effective December 1, 2019, and applies to
22 petitions filed on or after that date.

23
24 **PART V. EFFECTIVE DATE**

25 **SECTION 5** Except as otherwise provided, this act becomes effective December 1,
26 2019."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____